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ABSTRACT

This booklet on the rights of New Jersey's special needs students and their parents begins with general suggestions on learning about the child's condition and working with school personnel. The booklet outlines conditions that are defined as handicapping and then discusses such rights as the right to a free and appropriate public education, evaluation, classification, Individualized Education Program, placement in an appropriate environment, and re-evaluation. The booklet goes on to describe parents' rights to be informed and to have a mediation conference, a due process hearing, or other appeal. Special situations are considered, such as early intervention, preschool children with disabilities, children with mild speech problems or with temporary illness or injury, eligibility for day training, children in private schools, moving to a new school district, discipline of children with disabilities, and children whose parents cannot be located. An appendix discusses the legal background for these rights, further defines disabling conditions, lists important deadlines, offers sample letters, and provides addresses of relevant New Jersey state agencies. (JDD)

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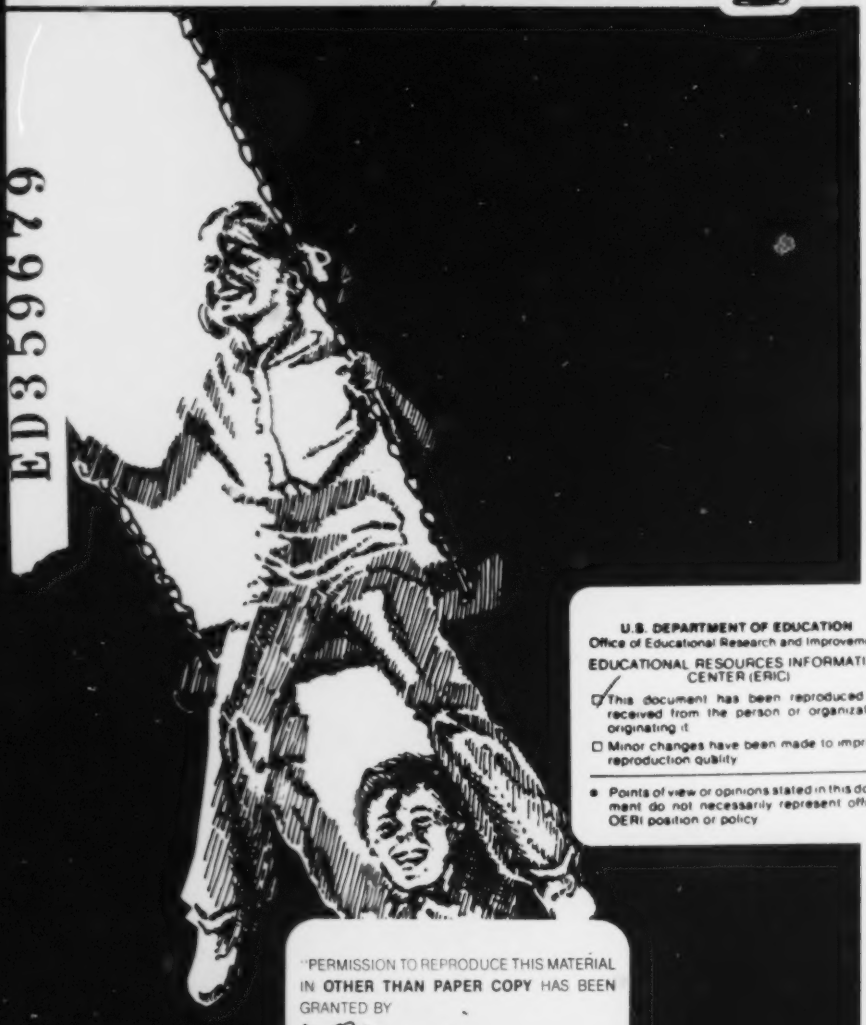

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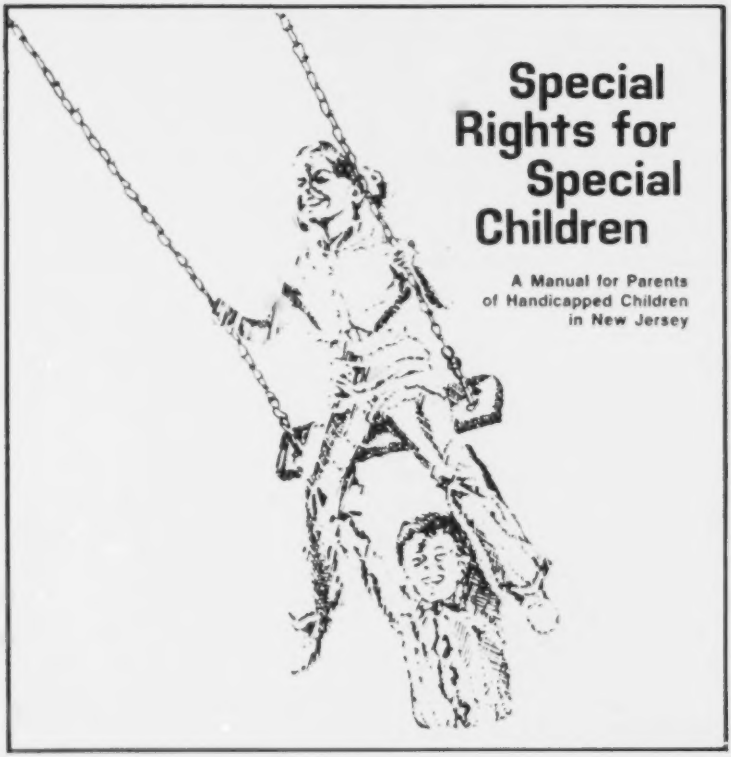

Special Rights for Special Children

A Manual for Parents of Handicapped Children in New Jersey

Prepared by
Staff Attorneys

Education Law Center, Inc.
December 1991

The Education Law Center, Inc., (ELC) is a nonprofit, public interest law firm specializing in elementary and secondary public education issues. ELC provides legal assistance to parents, students, and educational organizations in connection with grievances against the public school system which raise broad public interest concerns. ELC has offices in Newark, New Jersey and in Philadelphia and Pittsburgh, Pennsylvania.

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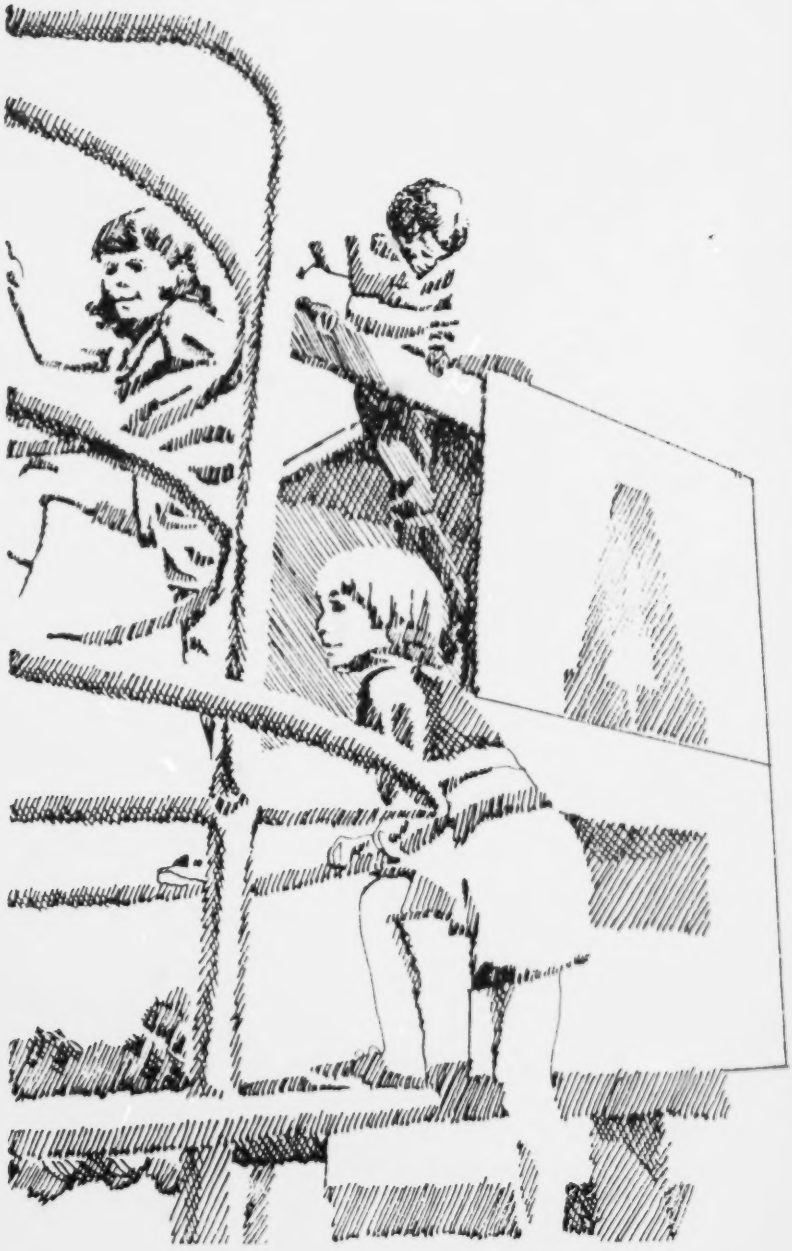

Your Rights in Brief

If you think your child is handicapped, you have:

- **The right** to have your child fully tested by your school district, at no cost to you.
- **The right** to see the results of this testing and all other records about your child.
- **The right** to have your school district consider the reports of people outside the district who have tested your child.
- **The right** to a written notice of the district's decision about your child's handicap and the reasons for the decision.

If your child is handicapped, you have:

- **The right** to a free appropriate public education for your child.
- **The right** to have your child educated in a setting which is as "normal" as possible.
- **The right** to have an Individualized Education Program (IEP) written for your child.
- **The right** to participate in the conference where the IEP is written.
- **The right** to have your child's IEP updated at least once a year.
- **The right** to have your child re-tested by your school district at least every three years.

If you disagree with your school district, you have:

- **The right** to be fully informed about the reason for the school district's decision.
- **The right** to have your child tested by someone outside the school district, at no cost to you.
- **The right** to mediation of a disagreement by your district superintendent, the County Supervisor of Child Study, or a New Jersey Department of Education official.
- **The right** to a formal hearing and a decision by an independent Administrative Law Judge.
- **The right** to appeal the judge's decision in either state or federal court.

Some Suggestions For Parents

Laws mandating education for handicapped children guarantee opportunities for parents to have a voice in educational decisions about their children. In this booklet we hope to help you, as parents, to take advantage of those opportunities, by informing you about your rights and advising you about what to do to make sure they are enforced.

It is important for you to understand from the beginning what we mean by "rights." When we say, for example, that your handicapped child has a "right" to a free appropriate public education, this does not mean that your child will automatically receive such an education, without any effort on your part. What it does mean is that the law is on your side; you can go to your school district with the knowledge that you are not asking for some special favor to be provided your child because of his or her handicap, but rather for what the child is entitled to under the law.

In order for your child to receive the full benefit of the laws, you must learn to be an effective advocate for your child. As an advocate, you are the person who speaks on behalf of the child, who understands his or her needs best and takes action to make

sure that these needs are met. Remember that while teachers and other school professionals may be experts in the education of handicapped children, they have many other children to be concerned about. Only you are in a position to speak on behalf of your particular child. In order to be an effective advocate for your child, you need to be fully informed and to know how best to use your information. While this entire booklet is intended to help you do this, the following are some general suggestions which may be useful to you.

First, as soon as you find out that your child has a problem, learn as much as you can, both about that particular problem and about education of handicapped children generally. Read as much as you can on the subject. Talk with doctors, teachers, and other professionals and with other parents. Consider joining an organization of parents whose children have similar problems, such as the Association for Retarded Citizens or the Association for Children with Learning Disabilities. Keep in close contact with your child's teacher and other people in your school district who are responsible for your child's education. Ask them for an explanation when you don't understand something.

Begin keeping a notebook about your child's education. Put into it all your copies of school records, reports, and educational plans, as well as any letters or other forms which the district sends to you. Whenever you have an important request to make to the district, put it in writing, and make a copy for your notebook. When you meet or talk on the telephone with someone from the school district, make an entry in your notebook, telling whom you talked to, when, where, what you discussed, and what was decided. This record will prove to be useful to you later, as you follow your child's progress in school and help to plan his or her educational program.

Find out who can help you if you run into problems getting your child the program he or she needs. Try to pick out someone in the school district who knows you and your child, and who can help you coordinate your dealings with the district and answer your questions. Know whom to call if you can't resolve a problem at the district level. Every County Superintendent's office has a County Supervisor of Child Study, whose job it is to monitor special education programs in the county and help resolve problems with local districts.

Finally, the idea of being involved in planning your child's educational program is probably a new one for you. It may take a while before you are comfortable in dealing with the district. The people in the school district are the education experts; but you are the expert on your child. If together you can work out a relation-

ship that takes full advantage of both these strengths, you will have taken an important step toward making the most of the educational opportunities for your child.

Who is a Handicapped Child?

A "handicapped child" is a child who, because of some physical, emotional, intellectual or social problem, needs the help of a special education program in order to learn to his or her fullest ability. Children defined as handicapped can be grouped into the following general categories*:

- **Mentally retarded** — children whose intellectual and social abilities are significantly below average.
- **Neurologically or perceptually impaired** — children who have difficulties in learning because of disorders of the nervous system or of the basic psychological processes involved in understanding and learning. These children are often called "learning disabled."
- **Emotionally disturbed** — children with severe and prolonged emotional problems.
- **Socially maladjusted** — children with serious social or behavioral problems.

*Beginning on page 46 is a listing of the names and exact definitions of all the conditions which are considered educational handicaps under New Jersey law.

- **Chronically ill** — children with an illness or other temporary or permanent health condition which prevents them from participating in a regular school program.
- **Orthopedically handicapped** — children with serious physical handicaps involving bones, muscles, or other body tissues, who because of these handicaps need some kind of special educational program.
- **Visually handicapped** — children who are blind or partially sighted.
- **Auditorily handicapped** — children who are deaf or hard of hearing.
- **Communication handicapped** — children with mild or severe speech difficulties.
- **Early Intervention** — infants and toddlers from birth through age two who are experiencing developmental delays.
- **Autistic** — children who have a pervasive developmental impairment characterized by social-emotional and/or communication handicaps.
- **Preschool handicapped** — children between the ages of three and five with illnesses or conditions that are likely to affect learning when they reach school age.

It is important to realize that a child who is having difficulty in school is not necessarily handicapped, although such a child may need or be receiving certain kinds of help. For example, many schools have special programs for children whose native language is not English, and who have trouble learning in English, but children are not to be considered handicapped just because they take part in such a "bilingual" program. Similarly, many children who are not handicapped receive special help in basic subjects such as reading or mathematics, as part of a program called "remedial" or "compensatory" education. In order for a child to be considered handicapped, and therefore entitled to the rights discussed in this booklet, his or her difficulties must be caused, at least in part, by one or more of the conditions listed above. Of course, a child who needs bilingual, remedial, or compensatory help may also be handicapped, and may be entitled to the benefits of *both* kinds of programs.

Certain of the procedures described in this booklet do not apply to two groups of children: those whose only handicap is a mild speech problem, and those who are confined to home or a hospital by a physician because of a temporary illness or injury. See page 40 for a discussion of the standards which apply to these children.

What is Your Handicapped Child Entitled to?

FREE APPROPRIATE PUBLIC EDUCATION

Special Education

Under the New Jersey and federal law, every handicapped child is entitled to a free program of education which is individually designed to meet his or her unique educational needs. Such a program is called "special education." While this does not mean that your child is entitled to the best or most expensive program available, the law does require your school district to provide your child with a planned educational program which takes account of his or her handicap and gives the child the special help he or she needs in order to learn. *No* child may be excluded from the public schools on the grounds that the child is too severely handicapped to benefit from education. The law recognizes that every child is able to learn and requires educational opportunities to be provided for all.

Related Services

In addition to the special education program itself, your child is also entitled to receive, at no cost, other services which are

necessary to help him or her to benefit from the education. The law refers to these as "related services." Some examples of related services are:

- Transportation to and from the child's school, including special equipment or other assistance if necessary.
- Physical or occupational therapy.
- Counseling for the child or the parents.
- Speech correction.
- Services of an audiologist for children with hearing loss, including selection and fitting of a hearing aid (but not the cost of the hearing aid itself).
- Learning consultant services.
- Psychological or social work services.
- Vocational services to help prepare the child for employment.

Remember that these are only examples; there may be other types of related services which a particular child needs in order to benefit from special education. As a general rule, if your child needs a service to benefit from special education, then that service must be provided by the school district. For example, the United States Supreme Court has held catheterization to be a related service.

If your child is entitled to special education and related services, your school district must furnish them free of charge. You cannot be required to pay any of the costs of education or related services, except for such minor expenses as admission fees to school-sponsored activities which the parents of nonhandicapped children also have to pay.

Equal Treatment with Nonhandicapped Children

Your child has a right to have as long a school day and school year as nonhandicapped children in your district, unless a different schedule is necessary because of the child's individual needs. Classrooms and other facilities for children receiving special education must be in as good condition generally as those for the rest of the students in the district. The school district must make sure that handicapped children are not kept out of certain school programs because of physical barriers in the school building, such as stairs or narrow doorways.

School Activities

Your child is entitled to participate, if he or she is able, in nonacademic school courses such as physical education, industrial arts, fine arts, music, home economics, and vocational education, which are available to nonhandicapped students. If necessary, these courses must be adapted to meet his or her particular needs. Other school activities, such as athletic, social and recreational activities, must be made available where such activities are appropriate for your child. After successfully completing his or her educational program, your child is entitled to receive a diploma and to participate in graduation activities with nonhandicapped children.

Students enrolled in special education programs may be exempted from all or part of the state and local graduation requirements. Any exemption must be specifically provided in the individualized education program (see page 19) along with reasons for the exemptions and alternative requirements for graduation.

Services to Private School Children

If you choose to place your child in a private school yourself, when there is an appropriate special education program available in the public schools, your public school district does not have to provide or pay for the child's education. There are certain services, however, which the school district must make available to your child in this situation. See page 42 for a description of these services.

EVALUATION

What is an evaluation?

Before your child can be placed in a special education program, he or she must be tested and observed, at no cost to you, by professionals employed by your school district. This process of testing and observation is known as "evaluation." The purpose of this evaluation is to gather information about your child from many different points of view. This information will then be used to decide whether your child is handicapped and in need of special education; if the answer to the question is yes, the evaluation results will be the basis for designing an educational program to meet the child's particular needs.

When must an evaluation be done?

Whenever someone brings to your school district's attention that your child may be handicapped, the district determines whether an evaluation is necessary. The "someone" who notifies the

district may be a teacher, a counselor, or other person in the district itself, or someone from an agency which has had contact with your child, or it may be you, the parent.

If you know or suspect that your child has a handicap, but your school district has not yet performed an evaluation, you should notify your school principal in writing and request that an evaluation be performed. Make sure your letter is dated, and keep a copy for yourself; this will give you a record of when and to whom your request was made. You must receive a reply within 30 days of your request. An example of a letter requesting an evaluation can be found on page 54.

Your right to notice and consent.

Once the district decides that your child needs an evaluation, you must be notified in writing, in language which you can understand, of the reason that an evaluation is planned. (This is required even if you yourself requested the evaluation.) This written notice must also include a description of the kinds of tests and other procedures which will be used in the evaluation. You must be informed that you have a right to give or refuse your consent. You will probably be asked to sign and return the notice if you agree to the evaluation. (Don't forget to keep a copy for your notebook.)

If you refuse to consent, the school district may request a hearing before an Administrative Law Judge to decide whether an evaluation is necessary. The procedure for this is described under *Hearing*, page 34. If the judge decides that your child should be evaluated, the district may proceed without your consent. Even if this happens, however, you will still have the same rights as other parents to participate in planning your child's educational program, and to challenge decisions of the school district with which you disagree.

Who performs the evaluation?

Every school district employs one or more "child study teams" (CST), which have the responsibility for evaluating children who may be handicapped and planning these children's educational programs. A child study team is made up of three members: a school psychologist, a learning disabilities teacher-consultant (often abbreviated as LDT-C), and a school social worker. One of these three members will be designated case manager to oversee your child's evaluation and program implementation. Each member of the team is responsible for a particular kind of examination of your child; in addition, a medical examination and an audiometric screening must also be included. The following are the types of examinations which will be performed:

- A psychological examination by the school psychologist, to assess your child's intellectual, emotional, and social development, as well as how well the child functions at home and with friends.
- An educational assessment by the learning disabilities teacher-consultant, including observation of the child, a review of his or her history, conferences with teachers, and analysis of the child's educational strengths and weaknesses.
- A social case study by the school social worker, including observation of and communication with your child and a study of family, school, and community factors which affect the child's performance in school.
- A speech and language development assessment, for children between the ages of three and five, by a speech correctionist or a speech-language specialist. The assessment includes observation of the child, communication with the parent or parents, and evaluation and analysis of the child's communication skills.
- A comprehensive medical examination by the school physician or school nurse practitioner, including a review of the child's medical history and an assessment of how any health problems or medical treatment (such as medication) may affect the child's ability to learn. (A report of such an examination by your private physician is sufficient if it is acceptable to the school physician.)

In addition, if the child study team suspects that your child might have a particular handicap, they may be required to have an examination performed by a person who is a specialist in that field. The definitions which begin on page 46 show which handicaps require the participation of specialists in the evaluation.

If you have had your child examined or tested privately by a doctor or another specialist, and you want the child study team to consider the opinions of these people, you may supply the team with copies of their reports. The team is required to consider these reports, but does not have to accept their findings. If the team does accept them, they must state this in their own evaluation reports.

What kinds of tests may be used?

All examinations which are a part of your child's evaluation must be based chiefly on tests which have been given to the child individually, rather than to a group of children together. If your child's native language is not English, the evaluation must be

conducted in the child's native language if it is possible to do so. The evaluation procedures must not discriminate against members of a minority group or against children whose native language is not English. The procedures must also take into account the nature of your child's problem; for example, if the child has difficulties in speaking, a person attempting to test his or her reading skills must make sure that the test results really reflect reading ability and not simply the speech problems.

The child study team may use I.Q. tests as part of the evaluation of your child. They may not, however, classify your child as handicapped on the basis of the results of an I.Q. test alone. They must consider other test results as well as the child's behavior at home and in school in reaching their decision.

When must the evaluation be completed?

All evaluations leading to a determination of your child's eligibility for special education and/or related services must be completed without any undue delay. After your child has been identified as potentially handicapped and your consent for initial evaluation has been received, the child study team has 90 days to evaluate and identify your child's special needs and to develop and implement his or her basic educational plan.

What if you disagree with the results?

You have a right to see and be given copies of all evaluation reports prepared by members of the child study team and by any other specialists who tested your child. You should make a point of requesting copies of these if they are not given to you automatically. You also have a right to an interpretation of anything in the reports which you do not understand.

If, after reading these reports, you disagree with the child study team's conclusions, you may request the school district to provide an independent evaluation — that is, one conducted by professionals who are not employed by the school district. In response to such a request, the district must do one of two things. They may agree to provide information to you on where to obtain an independent evaluation at no cost to you. If, however, they feel that another evaluation is not necessary, they may request a hearing (see page 34) to prove this. If after a hearing the Administrative Law Judge decides that the school district's evaluation is appropriate, you may still have an independent evaluation performed, and the child study team must consider the results in classifying and placing your child, but the school district will not pay for the evaluation. It is important to note, however, that the district *cannot* simply refuse to provide an independent evaluation and leave the next step up to you. You have a right to this second

evaluation and the district is required either to provide it at no cost or to prove it is not necessary.

How often must a new evaluation be done?
Once your child is classified as handicapped by the child study team, this entire evaluation process must be repeated at least once every three years. Only two members of the child study team are required for re-evaluations. The child study team shall determine, by the nature of the child's disability, which two members shall perform the assessment. For example, an emotionally disturbed child with no learning disability would be re-evaluated by the school psychologist and the social worker. A perceptually impaired child, on the other hand, would be re-evaluated by a learning disabilities teacher-consultant and either the school psychologist or the social worker. If, before the three years are up, you believe that the conclusions of the child study team are no longer valid, and that a new evaluation is necessary, you may request the school district to perform one. The district must agree to do so if there is evidence that the child's classification is no longer appropriate, or that for some other reason the child should be re-tested.

CLASSIFICATION

Once the evaluation process is complete, the members of the child study team — as well as the school principal, and referring staff members, if they choose to participate — will meet with you to decide whether your child is handicapped and in need of special education; if so, they will then decide which one or more of the names on pages 46 to 50 best describe your child's condition. This procedure is known as "classification".

If this is not the first evaluation and classification of your child, but is instead the required three-year re-evaluation, the team must review its previous decision, based on the new evaluation results, and revise the classification if necessary.

Whether or not the child study team, on the basis of its evaluation, decides to classify your child as handicapped, the team must notify you in writing of the decision. The document must contain the information listed under *Notice*, page 27. If you haven't already received copies of all evaluation reports which the team considered in making their decision, you should request those copies at this time.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

For every child who has been classified as handicapped, the school district is required to develop an Individualized Education Program (IEP). The IEP is a written plan which describes in detail the education program for your child for the school year.

The first part of the IEP, called the "basic plan," is written at a conference which includes the members of the child study team, your child's teacher or teachers, and you, the child's parent. You may take someone with you to help you at this conference, such as a friend, a relative, or someone else who knows your child well. Your child may also attend if you and the child study team feel this is appropriate. The purpose of this conference is to discuss all the information available about your child's educational needs and to design a plan to meet those needs. You may tape record this meeting. The "basic plan" part of the IEP must answer each of the following questions:

- How is this child preforming in school now, in all areas? What can and what can't he or she do?
- Why did the child study team decide that this child needs special education?
- What general goals should the child achieve by the end of this school year?
- What are some of the specific objectives which the child must meet in order to achieve these goals?
- What kind of educational program will the school district provide to help the child achieve these goals? Why is this kind of program appropriate? Why is it the least restrictive alternative? How much will the child participate in school programs with nonhandicapped and less severely handicapped children?
- What kinds of related services does the child need? When will these services begin, and for how long will they go on?
- How will the child study team measure whether or not the child is achieving the objectives set for him or her?
- What role will each member of the child study team have in carrying out the IEP?

After the conference, the child study team and your child's teachers will develop the second part of the IEP, called the "instructional guide," which will set forth in detail just how your child will be taught during the year. You have the right to partici-

pate in the development of the instructional guide, if you so choose.

The team must give you copies of both the "basic plan" and the "instructional guide" when they are completed.

The IEP for your child must be reviewed at least once a year, in a conference which includes the case manager from the child study team, your child's teacher or teachers, you, and your child if this is appropriate. At this conference the IEP will be updated or rewritten, if necessary, to reflect changes in your child's performance over the past year, new goals for the next year, or any other necessary changes.

It is important to remember that your child's IEP is a statement of what is necessary to provide an appropriate education for your child. Therefore, any services listed in the IEP *must* be provided to your child, and you cannot be required to pay for any of the costs of these services.

The child study team must notify you and invite you to participate in the IEP conference. They must make an effort to schedule the conference at a time and place which is convenient for you; if you require an interpreter in order to participate, the district must also arrange for one. It is up to you, of course, to inform them that you need to have a different date scheduled or that you need the services of an interpreter. If neither parent is able to attend the conference, you must still be allowed to participate if at all possible, for example, by telephone. If the team holds the conference without you, they must be able to prove that they made real efforts to persuade you to attend, by showing records of telephone calls, letters, and visits to you. If you should discover that the IEP conference has been held without an opportunity for you to participate, you should notify your school district that you are requesting a new conference which you will be allowed to attend. If this request if refused, and you feel a new conference is necessary, you may request mediation or a hearing (see page 31).

If you are unable to participate in the IEP conference at all, the child study team and a teacher will meet and draw up the IEP without you. You will be given a copy and will be asked to sign it if you agree with it. You will still have the same right to refuse to agree to the IEP, and, if necessary, to request mediation or a hearing (see page 31).

The IEP conference is probably the single most important part of your role as an advocate for your child. Even if you have never before gotten involved in your child's education, you should attend this conference if at all possible; this is your chance to have a real voice in the kind of education your child will receive. If you

feel uncomfortable about going alone, take someone along to help you; but by all means, *go.*

Preparing for the IEP Conference

Before the conference, you should try to prepare by gathering all the information you will need and then organizing your ideas, so that you can be as effective as possible in helping to plan your child's program. The following is a checklist of questions you should ask yourself as you prepare:

- Have I read *all* the records which the school district has concerning my child?
- Has my child been tested by all the different professionals who are required to perform evaluations according to the child's classification?
- Do I have copies of any school records which I may need, especially all evaluation reports and previous IEP's?
- Have I made notes of anything in the evaluation reports which I don't understand or with which I disagree?
- Have I sent copies of any reports of examinations or testing which have been done privately to the child study team for them to study the reports before the conference?
- Have I reviewed last year's IEP (if any) to see where it might be out of date or incomplete?
- Have I made a list of all the subjects which I think should be discussed at the IEP conference, such as:

  What kind of things my child is ready to learn.
  What my child is interested in.
  What problems, if any, I am aware of with my child's current program.
  Any related services (see page 12) which my child needs but is not receiving.
  What my child's needs are in the way of preparation for future employment, such as vocational school or a pre-vocational work skills program.
  What requirements my child needs to graduate.
- Have I shared my ideas and thoughts with friends, relatives, or others who know my child, and asked for their suggestions?
- If there is someone whom I would like to take to the IEP conference with me, have I made the necessary arrangements with that person?

While you are taking these steps to prepare for the IEP conference you should make a real effort to concentrate on your child's *future* education and not on any problems you have had in the past. You won't accomplish anything by bringing these problems up at the conference, so there is no point in wasting your time thinking about them now. Even if you and the school district have had serious conflicts or differences of opinion, try to put them behind you and focus all your attention on what you feel your child needs for the next year.

Participating in the IEP Conference

You should take with you to the conference your copies of your child's records, any notes or lists you have made, and anything else you may have which will support your opinions about your child's educational needs. You are entitled by law to tape record the IEP conference, so you may wish to bring a tape recorder with you to the conference.

The purpose of this conference is to use all the information available about your child to develop the IEP, which will determine what educational services your child will receive in the next year. There are several ways in which you can help in this process:

- Make sure that each required element of the IEP is discussed and a specific decision is reached. The law requires objectives to be specific and measurable. For example, an objective such as "learn to read" is too vague, because there will be no way to tell at the end of the year whether the objective has been achieved. If, instead, the objective is stated as "increase sight vocabulary from 46 words to 250 words," the reading teacher will be able to measure the child's improvement during the year.
- The conference should be conducted, and the IEP written, in language that you understand; if terms are used which are not familiar to you, don't be afraid to ask that they be explained.
- Participate in the discussion by contributing what you know about your child's skills, interests, needs, strengths and weaknesses, and learning style. If your child's behavior at home is different from what the teachers or other school personnel describe, tell them about what you have observed. By bringing out real-life information, you can help the professionals to remember that they are talking about a real child, and not a series of test scores.
- Refer to your checklist to see that all the issues you felt were important have been covered. If you feel something has been

brushed over too quickly, go back to it and ask for further discussion.

- If someone makes a suggestion about your child's program which you think is a good one, or agrees to one of your suggestions, insist that it be written into the IEP. Otherwise, the item may well be forgotten when the new IEP is being carried out.

Before the initial IEP can go into effect, you must approve it. Generally, you will be asked to sign it to indicate that you have participated and that you approve. Don't give your approval at the IEP conference itself; get a copy, take it home with you, and look it over carefully. If you decide that the IEP is satisfactory to you, sign and return it. If you are doubtful about some aspects of it, ask to talk to the team again, and try to work out your differences. If the problem can't be resolved, you have a right to refuse to approve the IEP and to ask for mediation or a hearing (see page 31). You should try to make you decision on whether to give your approval within a few days of the conference, if possible; but don't be pressured into signing if you really need more time.

Implementation of the IEP

If you agree to the IEP, it must be put into effect as soon as possible following the conference date. The basic plan portion of the IEP must be written and implemented within 30 days of classification. The instructional guide must be completed within 20 days after the IEP has been implemented. The entire process from initial parental consent to full program implementation must be completed within 110 days: 90 days for evaluation, classification, and basic plan implementation, and 20 days to complete the instructional guide.

By listing programs and related services in the IEP, the school system is agreeing to provide these programs and services to your child. This does not mean, however, that it is promising that your child will achieve the goals and objectives set out in the IEP. Teachers and other school personnel must make good faith efforts to help your child achieve them, but cannot be held responsible if they are not reached.

PLACEMENT

The child study team has the responsibility for recommending, based on the law, the results of the evaluation, and the IEP, what school and what type of class your child should attend. There are many different types of placements which the team may consider in making its decision:

- Placement full-time in a regular class with nonhandicapped children; with adjustments to meet your child's particular needs.
- Placement in a regular class for most of the time, but with extra instruction from a special teacher, or with part of the time spent in a resource room with a small group of students.
- Placement for most or all of the day in a special class where all the children have the same type of handicap as your child.
- Placement in a special public school for handicapped children, either in your own district or in another nearby district.
- Placement in a private school for handicapped children, either day or residential.
- Individual instruction by a certified teacher at home.

In deciding which of these alternatives is appropriate for your child's needs, there are several things which the child study team must consider. As a general rule, they must try to provide a program for your child which is as "normal" as possible. This is called the "least restrictive environment" rule. It means that, for one thing, the school where the child is placed should be the one he or she would attend if not handicapped, unless for some reason this school cannot meet the child's needs. In that case, the team must still try to place the child in a school as close to home as possible. The rule also means that, wherever your child is placed, he or she should be allowed and encouraged to attend classes and join in other school activities with children who are not handicapped or who are less severely handicapped, unless this would be harmful to the child. For example, your child might be taught reading and mathematics in a special class for handicapped children, but go to classes in art, music and physical education with children who are not handicapped.

It should be noted also that the child study team must base its placement decision on your child's individual needs as identified in the evaluation reports and the IEP, and not merely on what programs are available in your district. For example, if your child needs a placement in a special class for perceptually impaired children, the team may not recommend placement in a regular class with supplemental instruction, or in a class for the mentally retarded, simply because the district currently has no special classes for perceptually impaired children; in that case the district would either have to create a perceptually impaired class or find one outside the district for your child. On the other hand, though, the school district is not required to provide the best or most

ADDITIONS TO PLACEMENT OPTIONS ON PAGE 24 AS OF JULY 6, 1992

(These options are voluntary for 92-93 and will be required in 93-94.)

Placement in a Resource Center Program offers the following options as determined by the child's needs:

Half-day in regular class with up to half-day in separate Resource Room with			or	All-day in Regular Class with		
Resource Room support instruction*	or	Resource Room replacement instruction**		In class support instruction*	or	In class replacement instruction**

* Support Instruction is provided by a special teacher and supplements work assigned by the regular teacher

** Replacement Instruction is provided by a special teacher and replaces work assigned by the regular teacher [source: N.J.A.C. 6:28-4.3(d)]

Also Note: As of July 6, 1992, "handicapped" or "special education" pupil is to be referred to as a "pupil with an educational disability" in accordance with federal law.

expensive program which can help your child. If the placement can provide all the programs and related services listed in your child's IEP, and is in the least restrictive environment which meets his or her needs, then it probably satisfies the requirements of the law.

The school district may place your child in a private school, but only if there is no public school program, either in your local district or nearby, which is appropriate for his or her special needs.

The New Jersey Department of Education must individually approve each application by a local school district to place a particular handicapped child in a private school. The Department of Education maintains a list of private schools which it has approved for the education of handicapped children; a child may be placed in a private school on this list. If the child study team determines that a child's needs cannot be met in an approved school on the Department's list, but that a nonapproved, accredited school has an appropriate program to meet the child's needs, the school district may seek to place the child in that academic program. It must obtain the consent of the New Jersey Commissioner of Education. A child may also be placed in a nonapproved, accredited school by a court order. An accredited school has been recognized by a regional accrediting association or a state agency as a school upholding certain educational standards.

It is important to remember that if the school district and the New Jersey Department of Education approve a private school placement for your child, you cannot be required to pay for any program of instruction or related service which is necessary for your child's education. This is true even if the school where your child is placed is a residential school. If the child study team has decided that only a residential school can meet your child's educational needs and this decision has been approved by the Department of Education, the room and board as well as tuition must be provided at no cost to you.

When the child study team has made its recommendation about the placement of your child, you are to be notified in writing of their decision and the reasons for it. (See *Notice*, page 27). If the team is recommending special education for the first time, or a change in placement, you should visit the school or class which has been recommended, talk to the teachers and other personnel, and ask any questions you may have about the program. You might want to take someone with you, such as a teacher or a friend, who can help you in observing the program and deciding whether it meets your child's needs. If you feel that the recommended placement is not appropriate for your child, and the child

study team refuses to change its recommendation, you may request mediation or a hearing (see page 31) to challenge this decision.

RE-EVALUATION

A special education child undergoes re-evaluation every three years or more frequently if conditions warrant or if the parent requests it. Re-evaluation also occurs when a change in classification or significant change in placement is being considered.

A re-evaluation is conducted by at least two members of the child study team. The parent must be fully informed of the process and must be provided with a copy of the evaluation plan and notified of meeting times and participants. Parents, however, do not have the same rights of consent as they do for an initial evaluation. They may, however, always disapprove and challenge by requesting mediation and/or a hearing. Whenever you request one of these options, the child must remain in his or her current placement pending the outcome of the proceedings.

Your Right to be Informed

NOTICE

Whenever the school district proposes to refer your child to the child study team, or to evaluate, classify, or place your child in a special program, or make any changes in your child's classification or program, or re-evaluate your child, they must notify you in writing of their decision no less than 15 days prior to the proposed date of implementation. Whenever you request the district to take any action with regard to your child, the district must respond in writing within 30 days of the request. The notice of the district's decision must be in a form which you can understand, and must include certain elements:

- A description of the action they propose to take or refuse to take.
- An explanation for their decision.
- A description of the possible other actions they considered, and reasons why they decided not to take them.
- A description of all reports, test results, or other procedures which they used in making their decision.

- A description of any other factors which went into the decision.

The notice must also describe fully the steps you may take if you disagree with the school district's decision. If the school district makes a change in your child's program without notifying you in advance, you have a right to demand an explanation of the decision, covering all elements listed above. In any case, if you disagree with the decision of the school district, and you cannot work it out informally by talking with the principal, teachers, child study team members, or other personnel, you may use the mediation and hearing procedures (see page 31) to resolve your conflict.

LAWS AND REGULATIONS

Once your child is classified as handicapped, your school district is required *each* year to give you copies of the New Jersey laws and regulations concerning special education. In addition, the district must provide you with a copy of the procedural safeguard rights (*N.J.A.C.* 6:28-2 and *N.J.A.C.* 1:6A) when it seeks parental consent for an initial evaluation, when parents identify a child as potentially preschool handicapped, or when parents receive notice of re-evaluation.

Upon your request, the district must also provide you with the laws on special education, (*N.J.S.A.* 18A:46-1 *et seq.*), the pupil records rules (*N.J.A.C.* 6:3-2), and information regarding the availability of free and low cost legal or other services relevant to a due process hearing, and the hearing rules (*N.J.A.C.* 1:6A).

Even if you are having no problems with the district about your child's education, it is a good idea to request these materials and look them over; the more information you have about your child's education rights, the more effective you can be as an advocate for your child.

A Spanish version of the New Jersey regulations will be given to you if you request it.

YOUR CHILD'S RECORDS

You have the right to see *all* records kept by your school district concerning your child, except notes made by a teacher or other school district employee for his or her own personal use only. You may read the records, take notes on what they contain and have copies made for yourself. The school district must let you see the records within 10 days from the date you request to see them. If you have an IEP conference scheduled, or if you have requested

a hearing because of a disagreement with the district concerning your child, the district must let you see and copy the records before the conference or hearing. The district may ask you to pay for the cost of copying the records, but if you are not able to pay this cost, the district must give you the copies without charge.

Someone from the school district must be present when you look at the records to help interpret them for you. If you are deaf or do not speak English, they must try to translate for you or help you find an interpreter.

The only kind of information which the school district may keep on your child is that which is related to your child's education. If a teacher or another school employee enters comments about your child in the file, those comments must be based on the person's own knowledge or observation, rather than on hearsay or suspicion, and must be signed and dated by the person who made them. If you find information in your child's records which you think does not meet these requirements or is not accurate or not complete, you may ask the school principal to correct or destroy those records. If the principal refuses, you should write to the school superintendent, explaining the details of your disagreement. The superintendent must then meet with you within 30 days and make a decision in writing about whether the records will be changed. If you are not satisfied with the decision, you may request a mediation conference or a hearing as described beginning on page 31. In any case, you have the right to have kept in your child's file a statement written by you explaining why you feel a record is inaccurate or misleading.

With a few exceptions, no one who is not providing educational services to your child may see the child's records without your written permission. The only exceptions are for staff members of accrediting organizations, the New Jersey Department of Education, state protective services agencies, researchers who will keep the records anonymous and confidential, or persons with a court order if you are given three days' advance notice. In any of these cases, a record must be kept in the child's file containing the name and title of the person who was shown the records, the time and place, the reason, and the purpose for which the information will be used.

Once your child graduates, the district is required by law to keep certain basic information as a permanent record; all other information in your child's records, including all child study team evaluations and IEP's, must be destroyed if you request the district to do so.

If your child has been placed in a private school by your district, you have the same rights concerning the child's records

as you would if the child attended public school. All requests to see, change or destroy records should be made to your local district.

What if You Disagree with Your School District?

If you disagree with your school district about your child's evaluation, classification, IEP, or placement, and you cannot work out the problem informally by talking to teachers, child study team members, principal, superintendent, or other people in the school district, there are a number of steps you may take to get the problem resolved by a third party. While these steps are taking place, the school district may not make any change in your child's program except in an emergency, unless you agree. For example, suppose your child had just been evaluated and classified as handicapped, and the child study team recommended placing him or her in a special class for the entire school day. You might agree that the child needed a special class, but feel strongly that part of the day should be spent with nonhandicapped children in courses such as art and physical education. If you began taking formal steps to challenge the team's recommendation, your child would have to remain in a regular class until the disagreement was resolved. In this case, it would probably be a good idea to agree to the special placement for the time your challenge is taking

place, so that the child will be getting special help, as long as you make it clear, in writing, that you still disagree with part of the recommendation.

Once you decide to take action to oppose the school district's proposals, you must consider how you want to begin this process. You may decide first to contact someone informally for advice or assistance; some suggestions for people to call are given on page 8. If your problem is still unresolved, you may request mediation or a hearing. A *mediation conference* is a meeting where someone will listen to both sides and recommend possible solutions. A *hearing* is a more formal process, and the judge conducting it will make a final decision which both sides must accept (unless it is appealed, see page 38). If you choose to go first to a mediation conference and no agreement is reached, you may then ask for a hearing. But if you feel that it would be useless to try to settle your differences, or that the situation is too urgent to allow for mediation, you probably should skip this step and immediately request a hearing.

Another alternative would be to request both mediation and a hearing at the same time. This way, if your dispute is settled at the mediation conference, simply cancel the hearing; if not, you have not lost any time, and because the mediation conference will at least help both sides to define the issues and make sure they have collected all the information they need, you may find that the hearing will go more quickly and smoothly.

The school district also has the right to ask for mediation or a hearing to resolve a disagreement with you. If the district wants to evaluate your child, or to place him or her in a special education program for the first time, they cannot do so until you have given your consent in writing. If you refuse to consent, however, they may ask for mediation or a hearing to override your decision. Also, if you request an independent evaluation (see page 17) and the district refuses, the district must request a hearing to prove that a new evaluation is not necessary. In any other situation where you and the school district disagree, the district has the same right as you do to request mediation or a hearing.

MEDIATION

You may request a mediation conference by writing to the local school district superintendent, the Child Study Supervisor in the County Superintendent's office, or the New Jersey Department of Education's Division of Special Education. Your letter should identify your child by name, age, and school attended, and should briefly describe what your dispute is about and what you want for

your child. Don't try to make your arguments in your letter; save them for the meeting itself. Send a copy of your letter to your district superintendent of schools, and save a copy of your letter for yourself. A sample letter requesting a mediation conference is shown on page 52. Once your letter is received, the designated mediator, whether from the local district, the county, or the state, will set up a mediation meeting within 20 days of receipt of your request.

Before the conference, the mediator may contact your school district and arrange to review your child's records, observe your child in school and talk to teachers or other school district people who may have information which will help the mediator understand the issues involved. During this time you should also be preparing for the conference by trying to define exactly what your objection is to the school district's recommendations or actions, and by reviewing all records on your child to select those which you will take with you to the meeting. If your family doctor or some other professional has examined your child and made recommendations, ask for a written report and take the report to the meeting.

You may, of course, take anyone you wish to help you at the conference.

At the conference itself, the mediator will probably meet with you and the school district representatives separately, and then all together. Once the issues have been discussed, the person who is conducting the conference may suggest compromise approaches to resolving the disagreement. You should sincerely try to settle your differences with the school district, but you should not be afraid to disagree if you still feel the district is wrong.

At the mediation conference, you will have the opportunity to present the facts, issues and concerns which you have in regard to your child. A representative for the local school district will also have an opportunity to present the school's point of view. The purpose of the mediator is to facilitate an agreement between you and the school district. It is important to know that *you do not have to* reach an agreement and that either side may stop the mediation at any time. On the other hand, if you seem to be making progress, you can continue to meet with the mediator for an indefinite number of sessions, as long as both sides are willing to do so. If you reach an agreement, the mediator will write up the agreement and both parties will sign it. Both parties will be expected to abide by the agreement.

If you cannot reach an agreement, the mediator will only record the names of the people at the meeting and the dates on which you met and file this information in his office. Nothing further will happen unless you or the local school district decide

to request a due process hearing. If it is necessary to go to a formal hearing, you or the school district may introduce the mediator's report as evidence to be considered by the judge who conducts the hearing.

HEARING

The hearing, often called a "due process hearing," is a more formal procedure than mediation. It is conducted by an Administrative Law Judge at the Office of Administrative Law, who, after hearing both sides, writes a formal opinion giving his or her decision and the reasons for it. To request a hearing, you must write to the New Jersey Department of Education (see page 56 for address). The same points mentioned in the discussion about a letter requesting mediation (see pages 32-33) apply to the letter requesting a hearing. A sample letter requesting a hearing is shown on page 53. A representative from the New Jersey Department of Education will contact you and set up a conference within seven days of the receipt of your request, at a time and place which is convenient for you.

At this pre-hearing conference, both you and a representative from your school district will exchange information, including records which pertain to your child and what witnesses each party intends to call at the hearing. A representative from the Department of Education, who is also qualified as a mediator, will conduct this meeting. If both sides agree, you may also use this conference to mediate the dispute. The difference between this kind of mediation and the one described in the previous section is that here, mediation can only take place on the day of the conference and may not be extended.

At the conclusion of this meeting, the representative will either write up the agreement, if one was reached, or report and transmit to the Office of Administrative Law (OAL) the information which the parties exchanged. The representative will provide each party with a copy of the conference record. The representative will also telephone the OAL and set a date for the due process hearing which must be held within 14 days from the date of the conference. If both parties agree to postpone the hearing date, and if the Administrative Law Judge permits the postponement, there may be a delay in the hearing date.

It is very helpful, but not essential, to have a lawyer to represent you at the hearing. The Division of Developmental Disabilities, New Jersey Department of the Public Advocate, represents many handicapped children free of charge. See address on page 56.

There are other organizations which may be able to provide you with expert assistance, and possibly a non-lawyer who can assist you at the hearing. (Contact the Education Law Center for more information.) If you can't get someone to represent you, don't panic — at many hearings the parents present their own side of the case themselves. Remember, though, that in all probability the school district will be represented by the school board's attorney.

Your Rights at the Hearing

In order to make sure that the hearing allows you to present your side of the disagreement effectively, the law guarantees you certain rights:

- The right to an impartial Administrative Law Judge to conduct the hearing and make the decision.
- The right to have the hearing scheduled at a time and place which is reasonably convenient for you.
- The right to have a verbatim record kept of the hearing.
- The right to see and make copies of all records which the school district will present at the hearing at least five days before the hearing itself.
- The right to be represented by any person of your choice, including a lawyer.
- The right to present documents, to call witnesses, and to question or cross-examine witnesses presented by the school district.
- The right to prevent the school district from presenting any evidence which has not been shown to you at least five days before the hearing.
- The right to require any school official or employee who has knowledge of the case to attend the hearing.
- The right to receive the judge's decision and the reasons supporting it within 45 days of the date your request for a hearing was received.
- The right to have the decision of the judge carried out immediately, even if the school district loses and plans to appeal the decision, unless the school district can persuade the judge that this may be harmful to the child or other children.

The school district also has these same rights.

Preparing for the Hearing without a Lawyer
If you are going to handle the hearing yourself, there are some important steps you should take to prepare for it:

Define the issue. Try to put in writing for yourself, as clearly and exactly as possible, just what it is that you and the school district disagree about. You should try to put aside any disputes you've had with the district in the past, unless they have some very direct connection with your present problem. Be as specific as you can; it's very difficult to prove a point at the hearing if you're not sure just what you're trying to prove.

Get your child's records. Don't assume that you have copies of all the records in your child's school file. Go to the school and ask to see the entire file. If you are told that you must wait more than a few days, tell them that you have requested a hearing; ordinarily a school can wait up to 10 days to show you records, but they must let you have them before a hearing.

Identify important documents. Go through the school records, especially the most recent ones, and any other reports or documents you have relating to the problem. Pick out those which most strongly support your position. Make a list of these for yourself, identifying them by title and date, and including a brief note about why each will be helpful to you. Try to keep the number of documents to be used at the hearing fairly small; having too many can be confusing instead of persuasive. When you have decided which documents you want to use, make three copies of each of them to take with you: one for the judge, one for the board's attorney and one for yourself.

Also look for anything in your child's records which supports the district's side of the dispute. Think about how you will respond if these records are brought out at the hearing.

Identify your witnesses. Decide who, in addition to yourself, should testify for you at the hearing. If you have had evaluations done privately and you wish to use reports of these evaluations to support your case, you should have the specialists who prepared the reports testify in person at the hearing, to explain their results and recommendations. It may also be helpful to have as witnesses people who have worked with your child, such as teachers or counselors, and people who are familiar with the program you want for your child. If your dispute concerns views of your child's abilities, a friend or relative who knows the child well may be able to give helpful information. Contact each possible witness to

make sure he or she will be available for the hearing. As with documents, it is wise to keep the number of witnesses reasonably small — make sure you have a good reason for offering each one's testimony.

Prepare your questions. For each witness, decide exactly what information you want to present, and prepare a list of questions which will bring out that information. The judge may question the witnesses at the hearing, after you and the board's attorney have finished, but he or she has no way of knowing what the witness has to offer toward your case unless you bring it out first. Your questions to the witnesses should be only about what they have personally done, seen, and heard.

What Happens at a Hearing?

At the hearing itself, the central question which the judge must decide is whether the school district's recommendation, yours, or some other solution is appropriate for your child's special educational needs. The judge must base this decision only on evidence presented at the hearing and must make an independent judgement without giving extra weight to the school district's recommendations.

The hearing will be closed to the public, unless you wish to have it open for some reason. Therefore, the only people present will probably be the judge, the parties and their representative if any, and the witnesses. If you are handling the hearing yourself, you may take someone with you for assistance or even just for moral support. A record of the hearing will be kept, either by tape recorder or by a court reporter.

At the beginning of the hearing, each side will be asked to state briefly what its position is in this dispute, and what witnesses it intends to call. Then each party calls its witnesses and questions them; generally the side which requested the hearing presents its witnesses first. After each witness testifies, the other side and the judge may ask the witness questions to clarify or dispute his or her testimony. After all witnesses have testified and all documents have been presented, both sides may make closing statements to summarize why they feel the evidence has supported their respective positions. If you are not represented at the hearing and you are uncertain how to proceed at any time, ask the judge for guidance; it is his or her job to see that both sides get a fair hearing.

The judge, after hearing all the evidence, may decide that an independent evaluation of your child is necessary in order to reach a decision. If such an evaluation is ordered, it must be conducted at no cost to you.

Outcome of the Hearing

The decision of the judge, in writing and with reasons supporting the decision, must be mailed to you within 45 days of the date you requested the hearing. This decision is to be carried out immediately, even if one side decides to appeal, unless the judge can be persuaded that to do so may cause harm to your child or to other children.

APPEALS

Either side may appeal the judge's decision in either State Court or Federal District Court. In either case, the process will be difficult and time-consuming; it is recommended that you obtain the services of a lawyer in such a situation if at all possible.

Requesting Emergency Relief

You may need to request an emergency relief hearing when your child's circumstances require immediate attention, which you are not getting from your school district. In an emergency relief hearing, you must be able to prove that unless immediate relief is ordered, either serious physical harm will come to your child or your child's educational program will be terminated or interrupted.

You may request emergency relief in one of two ways: 1) if you have not requested a due process hearing, your written request for emergency relief must be addressed to the Director of the Division of Special Education, New Jersey Department of Education; or 2) if you have already requested a due process hearing and your request has been transmitted to the Office of Administrative Law, your request should be addressed directly to the Office of Administrative Law. Emergency relief will be ordered if you have proven a reasonable probability of ultimately prevailing if your case were tried at a regular hearing.

Some Special Situations

Up to this point, the discussion in this booklet has covered the educational rights of handicapped children as they apply in the majority of situations. In some circumstances, however, the rules must be applied differently or interpreted further in order to meet the needs of particular children. The following pages cover some of those situations.

EARLY INTERVENTION

The early intervention program serves infants and toddlers from birth through age two who are experiencing developmental delays or who are at risk of having developmental delays. Children identified through the program must receive a full evaluation of their level of functioning in each area of development. If a child is determined eligible for early intervention, an individualized family service plan (IFSP) will be developed jointly by the child's family, the case manager and appropriately qualified personnel involved in the provision of early intervention services. This written plan, to which the parent must consent initially, sets forth the services to be provided, the frequency of the services, the location where the

services will be provided, and any information necessary in order for the child to receive services.

For more information on the early intervention process and a full explanation of parent and family rights in the early intervention program, see the Education Law Center's publication, "Special Rights Before Age 5."

PRESCHOOL HANDICAPPED CHILDREN

Under New Jersey law, handicapped children between the ages of three and five are entitled to the same programs and services from their local school district as are provided school-age handicapped children. The school district must follow all of the procedures and timelines discussed in this booklet. Children eligible for preschool handicapped programs are classified "preschool handicapped." For children who were enrolled in early intervention programs and identified to the school district 90 days prior to the attainment of age three, the school district must begin the special education process in order to implement a program by the time the children attain age three. The school district is also obligated to begin the special education process for children who were not enrolled in early intervention programs 90 days prior to their attainment of age three. Preschool handicapped programs can be implemented at the time of the child's third birthday, whatever time of the year that may be.

For more information, consult the Education Law Center's publication, "Special Rights Before Age 5," available from the ELC office in Newark .

CHILDREN WITH MILD SPEECH PROBLEMS OR WITH TEMPORARY ILLNESS OR INJURY

A child experiencing only mild speech difficulties may be tested and classified as "communication handicapped — eligible for speech-language services" by a certified speech correctionist, without referral to and evaluation by the child study team. The IEP for such a child is developed at a conference which includes at least the speech correctionist, the parent, and the child's teacher or teachers. The child study team members may attend this conference, but their participation is not required. All the other provisions described in this booklet, including the mediation and hearing procedures, do apply, however, to this child.

In the case of a child confined to his home or a hospital by a physician for more than two weeks, the school physician may determine the child eligible for home instruction. This child would be entitled to individual instruction at no cost for at least five hours

per week, on at least three separate days. Additional instruction may be given by telephone or television in communication with a classroom. With these exceptions, this child is guaranteed the same services and rights as other handicapped children.

ELIGIBLE FOR DAY TRAINING

A child who has been classified as "mentally retarded — eligible for day training" does not have to be educated by his or her local school district. The district will instead make arrangements for placement with the New Jersey Department of Human Services, Division of Developmental Disabilities. This state agency operates a number of Day Training Centers which provide day programs for severely and profoundly retarded children. The local school district child study team is responsible for the evaluation and classification of an Eligible for Day Training child; the development of the IEP is the responsibility of the local team acting together with a curriculum specialist from the Day Training Center which the child will attend. Children attending these programs are guaranteed the same educational rights as are other handicapped children, and their parents are similarly entitled to all the rights discussed in this booklet, including access to student records, participation in the IEP conference, and challenges to educational decisions by using mediation and hearing procedures.

For more information on programs for children classified as Eligible for Day Training, contact the Office of Education in the New Jersey Department of Human Services. (See address on Page 56).

Parents of children classified as Eligible for Day Training have a right to contest all disputes arising out of the education of their children through the dispute resolution procedures established by the New Jersey Department of Education. If the dispute concerns a child's classification, placement, or IEP development, then the parent should proceed against the local school district. If the problem involves the implementation of a child's IEP, or involves a related service, then the action should be brought against the New Jersey Department of Human Services. In either case, a request for a due process hearing is filed with the New Jersey Department of Education (See letter on page 53.)

The New Jersey Department of Human Services has established optional dispute resolution procedures in all Day Training Centers. Consult the Center's school administrator for more information.

CHILDREN PLACED BY PARENTS IN PRIVATE SCHOOL

If you, independent of your school district, have enrolled your child in a private school, the district does not have to provide all the services to which public school handicapped children are entitled, or to pay for their provision by the private school. There are, however, certain services which New Jersey law requires the district to furnish to private school students:

- Identification of potentially handicapped children.
- Evaluation and classification of such children, on the same basis as public school students.
- For children classified as communication handicapped, the services of a speech correctionist.
- Supplementary instruction (instruction given in addition to the regular classroom program) for those handicapped children who would be entitled to such instruction if enrolled in the public schools.

In addition, the district in which the private school is located must provide:

- Transportation to and from school on the same basis as public school students, up to a maximum cost per child of $325 per year. If you transport your child to and from school, you are entitled to be reimbursed up to $325 per year by the district for the cost of transportation.
- Transportation to and from the location where the speech correction or supplementary instruction is offered.

The child's parent must agree in writing before any of these services may be provided to the child.

To request any of these services for your child, call the office of your superintendent of schools.

MOVING TO A NEW SCHOOL DISTRICT

If your child was identified as possibly handicapped by your old school district, but was not yet classified, your new district should place the child in the regular school program while its child study team does its own evaluation and classification.

If your child has already been classified, and an IEP written by your old district, the child study team of the new district still must do its own review of the classification, IEP, and placement within 30 days; during this time, however, they should place the child in a program which is consistent with the previous IEP.

DISCIPLINE OF HANDICAPPED CHILDREN

A school district may punish children classified as handicapped for violating school rules, but there are certain kinds of actions which they may not take. They may not suspend or expel a handicapped child for behavior which is caused by the handicap. The child study team must include in the written IEP any exemptions from school rules which apply to the handicapping condition. For example, a child classified as emotionally disturbed should not be suspended for fighting with another student, since this would be just the kind of behavior that the special education program is supposed to deal with. The school could, of course, take whatever emergency action was necessary to protect the child or other students from harm.

Long suspension of a handicapped child must be preceded by several procedures, including a child study team review of the placement and parental notification. Any suspension of more than 10 consecutive school days constitutes a change in placement and must therefore be preceded by the legally-mandated procedures for changing a placement. For further information see ELC publication, "Discipline for Handicapped Children."

CHILDREN WHOSE PARENTS CANNOT BE LOCATED

If the school district is unable to identify or locate the parent or guardian of a child who may be handicapped, it must appoint someone to act as a "surrogate parent" for the child. The surrogate must be someone with the knowledge and skills to act on the child's behalf, and must not have any conflict of interest with the child; he or she may not be an employee of the school district.

Once appointed, the surrogate parent may take any action that a real parent may take regarding the child's education; he or she may consent or refuse to consent to certain actions by the school district, participate in the child's IEP conference, and request mediation or a hearing to challenge the recommendations of the district.

Conclusion

There has been a lot of discussion in this booklet about "rights." We explained what is meant by your child's right to free appropriate public education, including an evaluation, an IEP, and an appropriate placement. Then we discussed your rights: to participate in the IEP conference, to be fully informed about your child's education, and to challenge your school district's decisions when you disagree with them. And we have made some suggestions to help you use these rights effectively. But the next step must be yours. While your school district must make every effort to meet your child's educational needs, *your* participation is an essential part of the whole process. The only way the rights discussed here can really make a difference is if you, as your child's advocate, take full advantage of every opportunity you have to share in the important decisions about your child's education. The rights and the opportunities are there; the rest is up to you.

Appendix

LEGAL BACKGROUND

The principal federal law concerned with the educational rights of the handicapped is Public Law 94-142, the Education for All Handicapped Children Act of 1975 (20 *U.S.C.* 1401 *et seq.*). This law, which went into effect on October 1, 1977, requires states receiving funds under the Act (of which New Jersey is one) to provide, by September 1, 1978, a free appropriate public education for all school-age handicapped children. The law specifies what states must do to meet this requirement, and guarantees the right of parents to participate fully in planning and monitoring the educational programs to be provided to their handicapped children.

Another federal law which affects the areas discussed in this booklet is Section 504 of the Rehabilitation Act of 1973 (29 *U.S.C.* 794). This law prohibits discrimination against handicapped persons in programs receiving federal funds; it applies to most if not all educational programs operated by local school districts in New Jersey. The federal government has issued regulations interpreting this law as it applies to education (45 *C.F.R.* Part 84); most of

the requirements are similar to those in the regulations for Public Law 94-142 (45 *C.F.R.* Part 121a). The Section 504 regulations for education went into effect on June 3, 1977.

Many of the practices and procedures required by these federal laws were already included in New Jersey state law and regulations. The state special education regulations are in full compliance with the federal laws. Copies of the state statues (*N.J.S.A.* 18A:46-1 *et seq.*) and regulations (*N.J.A.C.* 6:28-1.1 *et seq.* and *N.J.A.C.* 1:6A-1 *et seq.*) are available from local school districts, the New Jersey Department of Education, and the Office of Administrative Law.

In any case where New Jersey law and practice does not meet the minimum requirements of the federal laws, it is the federal laws which govern. If New Jersey law in some instances gives handicapped children and their parents more rights than required by federal law, you are entitled to the additional rights granted by the state.

HANDICAPPING CONDITIONS

Note: The following definitions are taken from the New Jersey special education regulations, *N.J.A.C.* 6:28-3.5(c):

Auditorily Handicapped

Definition:
An inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by the following:

1. The pupil is impaired in processing linguistic information through hearing, with or without amplification; and
2. The loss of hearing may be permanent or fluctuating and adversely affects the pupil's education.

Additional evaluations required:
Specialists qualified in the field of audioligy and a speech and language evaluation by a certified speech correctionist or speech-language specialist.

Autistic

Definition:
A pervasive developmental impairment characterized by the following:

1. Social-emotional and communication development impaired in ways that are not merely predictable from cognitive and/or sensory impairments.

2. Extreme aberrant responses to one or more aspects of the environment, such as insistence on sameness, resistance to change, stereotypic behaviors, lack of responsiveness to others or repetitive movements.

3. Onset in infancy or childhood.

Additional evaluations required:
Speech correctionist or speech-language specialist and evaluation by a physician trained in neurodevelopmental assessment.

Chronically Ill
Definition:
A health condition such as tuberculosis, cardiac condition, leukemia, asthma, seizure disorder or other disability which makes it impractical to receive adequate instruction through a regular school program.

Additional evaluations required:
School physician or his or her review and written acceptance of the medical report of another physician. The school nurse shall assist in the accumulation of the data necessary to determine eligibility.

Communication Handicapped
Definition:
Impaired native speech or language which is outside the range of acceptable variation, which adversely affects a pupil's educational performance, and is not due primarily to hearing impairment as defined under "auditorily handicapped." It is characterized by the following:

1. "Communication handicapped" means a severe speech or language disorder which interferes with the ability to use oral language to communicate;

2. "Eligible for speech-language services" means a mild to moderate disorder in language, articulation, voice or fluency which requires instruction by a speech correctionist or speech-language specialist.

Additional evaluation required:
Certified speech correctionist or speech-language specialist.

Emotionally Disturbed
Definition:
Exhibiting of seriously disordered behavior over an extended period of time which adversely affects educational performance

and may be characterized by the following:

1. An inability to build or maintain satisfactory interpersonal relationships;
2. Behaviors inappropriate to the circumstances, such as a general or pervasive mood of depression or the development of physical symptoms or irrational fears.

Additional evaluation required:
Psychiatrist experienced in working with children.

Mentally Retarded
Definition:
Cognitive, social and academic functioning which is seriously below age expectations. Such functioning is comprehensive in nature, being demonstrated in home, school and community settings, and characterized by one of the following:

1. "Educable" means a level of cognitive development and adaptive behavior in home, school and community settings that are moderately below age expectations with respect to all of the following:
   (a) The quality and rate of learning;
   (b) The use of symbols for the interpretation of information and the solution of problems;
   (c) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.
2. "Trainable" means a level of cognitive development and adaptive behavior that is severely below age expectations with respect to all of the following:
   (a) The ability to use symbols in the solution of problems of low complexity;
   (b) The ability to function socially without direct and close supervision in home, school and community settings;
   (c) Performance on an individually administered test of intelligence that falls three standard deviations or more below that mean.
3. "Eligible for day training" means a level of functioning profoundly below age expectations whereby on a consistent basis the pupil is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.

Additional evaluation required:
None.

Multiply Handicapped
Definition:
The presence of two or more educationally handicapping conditions which interact in such a manner that programs designed for separate handicapping conditions will not meet the pupil's educational needs. All evident educational handicaps shall be documented. Eligibility for speech-language services as defined in this section shall not be one of the handicapping conditions which forms the basis for the classification of a pupil as "multiply handicapped."

Additional evaluations required:
All specialists required for the child's separate handicapping conditions.

Neurologically or Perceptually Impaired
Definition:
Impairment in the ability to process information due to physiological, organizational or integrational dysfunction which is not the result of any other educationally handicapping condition or environmental, cultural or economic disadvantage and is characterized by the following:

1. "Neurologically impaired" means a specific impairment or dysfunction of the nervous system which adversely affects the education of a pupil.
2. "Perceptually impaired" means a specific learning disability manifested in a disorder in understanding and learning, which affects the ability to listen, think, speak, read, write, spell and/or compute to the extent that special education is necessary for achievement in an educational program.

Additional evaluations required:
For children classified as neurologically impaired, a physician trained in neurodevelopmental assessment.

Preschool Handicapped
Definition:
An identified handicapping condition and/or a measurable developmental impairment in children age three through five who require and would benefit from special education and/or related services.

Additional evaluation required:
Speech correctionist or speech-language specialist.

Orthopedically Handicapped

Definition:

A condition which, because of malformation, malfunction or loss of bones, muscle, or body tissue, necessitates special education and/or related services.

Additional evaluation required:

Physician qualified to conduct an orthopedic evaluation.

Socially Maladjusted

Definition:

A consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the pupil or other pupils and is not due to emotional disturbance as defined above.

Additional evaluation required:

Psychiatrist experienced in working with children, if determined necessary by the child study team.

Visually Handicapped

Definition:

An inability to see within normal limits as characterized by the following:

1. "Blind" means a loss of acuity or field restriction so great that a pupil cannot rely on sight to learn.
2. "Partially sighted" means a field restriction or loss of visual acuity which adversely affects a pupil's education, but which does not warrant classification of a pupil as "blind." A partially sighted pupil is able to use sight to learn.

Visually handicapped pupils eligible for special education and/or related services shall be reported to the New Jersey Commission for the Blind and Visually Impaired.

Additional evaluation required:

Specialist qualified to determine visual disability.

Important Deadlines

Action	Person Responsible	Number of Days	From
Evaluate, develop and implement IEP	Principal and child study team	90	Date parent's consent was given
Complete instructional guide portion of IEP	Child study team and special education teacher	20	Implementation of IEP basic plan
Hold conference prior to due process hearing	Representative of Division of Special Education	7	Date due process hearing request was received
Due process hearing	Administrative Law Judge	14	Date of pre-hearing conference
Hold mediation conference	Mediator - district or county or state	20	Date mediation was requested
Mail copy of hearing decision to parents and district	Administrative Law Judge	45	Date due process hearing was requested
Allow parents to see child's records	School	10 (or less if hearing or conference is scheduled)	Date parents made request

Request for Mediation

[Your address]
[Your phone number]
[Today's date]

[Division of
Special Education
New Jersey Department of Education] **OR**
[County Supervisor of Child Study] **OR**
[Local District Superintendent]

Dear Sir or Madam:

I am the parent of _____, age _____, who is currently a student at the _____ School in the _____ District, _____, New Jersey. I have met with representatives of the school district, but we have been unable to resolve a disagreement regarding _____'s education. The disagreement involves [explain *briefly* the issue to be discussed at the mediation]. I am therefore requesting that a mediation conference be scheduled where we may discuss this matter and attempt to resolve it.

Thank you.

Yours truly,
[Your name]

cc: Superintendent of Schools

Send a copy of this letter to your district superintendent; keep another copy for yourself.

Request for Due Process Hearing

[Your address]
[Your phone number]
[Today's date]

Director
Division of
Special Education
New Jersey Department of Education
225 West State Street
CN-500
Trenton, NJ 08625

Dear Sir or Madam:

I am the parent of _____, age_____, who is currently a student at the _____ School in the _____ District, _____, New Jersey. I have met with representatives of the school district, but we have been unable to resolve a disagreement regarding _____'s education. The disagreement involves [explain *briefly* the issue to be discussed at the hearing]. I am therefore requesting that a due process hearing be scheduled so that the matter may be resolved.

Thank you.

Yours truly,
[Your name]

cc: Superintendent of Schools

Send a copy of this letter to your district superintendent; keep another copy for yourself.

Request for Evaluation

[Your address]
[Your phone number]
[Today's date]

[Principal's name]
[School name]
[School address]

Dear _____:

I am the parent of _____, age _____, who is currently a student in grade _____ at _____ School. I have reason to believe that my child has special needs that cannot be met by a regular school program. [Explain *briefly* why you believe this to be true]. Please arrange to have my child evaluated by a child study team as quickly as possible, so that an appropriate program for [him/her] can be provided.

Thank you.

Yours truly,
[your name]

Make a copy of your letter to keep for yourself.

Request for Emergency Relief

[Your address]
[Your phone number]
[Today's date]

Director
Division of Special Education
New Jersey Department of Education
225 West State Street
CN 500
Trenton, NJ 08625

Dear Sir or Madam:

I am the parent of _____,
age _____, who is currently a student at the
_____ School in the
_____ District, _____, New
Jersey. I am requesting an emergency relief hearing because [explain *briefly* what irreparable harm may come to your child if immediate relief is not provided]. Thank you.

Yours truly,
[Your name]

cc: District Child Study Team

Send a copy of this letter to your district child study team; keep another copy for yourself.

If you have already applied for a due process hearing and your case has been transmitted to the Office of Administrative Law, send your request for emergency relief directly to the OAL.

New Jersey Department of Human Services Address

For children classified as Eligible for Day Training or children in state residential facilities:

Director, Office of Education
New Jersey Department of Human Services
10 Quakerbridge Plaza
CN 700
Trenton, NJ 08625
(609) 588-3164

New Jersey Department of Public Advocate Address

To request legal assistance:

Division of Advocacy for the Developmentally Disabled
New Jersey Department of Public Advocate
CN-850
Trenton, NJ 07512
(609) 292-9742

New Jersey Department of Education Addresses

To request mediation or a hearing:

Director, Division of Special Education
New Jersey Department of Education
225 West State Street
CN-500
Trenton, NJ 08625
(609) 292-0147

County Supervisors of Child Study:

Atlantic County Supervisor of Child Study
New Jersey Department of Education
Atlantic County Office
1200 Harding Highway
Mays Landing, NJ 08330
(609) 625-0004

Bergen County Supervisor of Child Study
New Jersey Department of Education
Bergen County Office
327 East Ridgewood Avenue
Paramus, NJ 07652
(201) 599-6256

Burlington County Supervisor of Child Study
New Jersey Department of Education
Burlington County Office
Union and High Streets
Mount Holly, NJ 08060
(609) 265-5060

Camden County Supervisor of Child Study
New Jersey Department of Education
Camden County Office
6981 North Park Drive, West Bldg. - Suite 513
Pensauken, NJ 08109
(609) 765-5700

Cape May County Supervisor of Child Study
New Jersey Department of Education
Cape May County Office
Central Mail Room - DN 701
Crest Haven Complex
Cape May Court House, NJ 08210
(609) 465-1282

Cumberland County Supervisor of Child Study
New Jersey Department of Education
Cumberland County Office
19 Landis Avenue
Bridgeton, NJ 08320
(609) 451-0211

Essex County Supervisor of Child Study
New Jersey Department of Education
Essex County Office
155 Fairview Avenue
Cedar Grove, NJ 07009
(201) 857-5700

Gloucester County Supervisor of Child Study
New Jersey Department of Education
Gloucester County Office
Tanyard and Salina Roads
R.R.4, Box 184D
Sewell, NJ 08080
(609) 629-5900

Hudson County Supervisor of Child Study
New Jersey Department of Education
Hudson County Office
595 Newark Avenue
Jersey City, NJ 07306
(201) 915-1250

Hunterdon County Supervisor of Child Study
New Jersey Department of Education
Hunterdon County Office
County Administration Building
Main Street
Flemington, NJ 08822
(908) 788-1414

Mercer County Supervisor of Child Study
New Jersey Department of Education
Mercer County Office
P.O. Box 8068
Trenton, NJ 08619
(609) 588-5873

Middlesex County Supervisor of Child Study
New Jersey Department of Education
Middlesex County Office
200 Old Matawan Bridge
Old Bridge, NJ 08857
(908) 390-6000

Monmouth County Supervisor of Child Study
New Jersey Department of Education
Monmouth County Office
Campbell Court and Highway 9, P.O. Box 1264
Freehold, NJ 07728-1264
(908) 431-7811

Morris County Supervisor of Child Study
New Jersey Department of Education
Morris County Office
Box 900
Morristown, NJ 07963
(201) 285-8320

Ocean County Supervisor of Child Study
New Jersey Department of Education
Ocean County Office
212 Washington Street
Toms River, NJ 08753
(908) 929-2078

Passaic County Supervisor of Child Study

New Jersey Department of Education
Passaic County Office
31 McBride Avenue Extension
Paterson, NJ 07501
(201) 881-7123

Salem County Supervisor of Child Study
New Jersey Department of Education
Salem County Office
Lakeview Offices
R.D. 2, Box 344
Woodstown, NJ 08098
(609) 769-2700

Somerset County Supervisor of Child Study
New Jersey Department of Education
Somerset County Office
Somerset County Annex
P.O. Box 3000
Somerville, NJ 08876
(908) 231-7171

Sussex County Supervisor of Child Study
New Jersey Department of Education
Sussex County Office
18 Church Street
Newton, NJ 07860
(201) 579-6996

Union County Supervisor of Child Study
New Jersey Department of Education
Union County Office
300 North Avenue East
Westfield, NJ 07090
(908) 654-9860

Warren County Supervisor of Child Study
New Jersey Department of Education
Warren County Office
Court House
413 Second Street
Belvidere, NJ 07823
(201) 475-6327

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JANUARY

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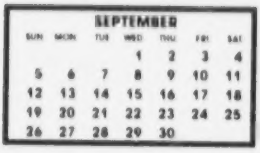

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OCTOBER

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24 31	25	26	27	28	29	30

NOVEMBER

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

DECEMBER

SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

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